



---

To: All HOME & CDBG Recipients  
From: IHFA Community Development Department  
Date: December 13, 1999  
Re: **Section 106 Review Process**

---

**Notice: FSP-99-10**

Effective June 17, 1999, the Advisory Council on Historic Preservation passed new Section 106 Regulations (36 CFR Part 800). If you would like a copy of the regulations, please visit the Advisory Council's web site at [www.achp.gov](http://www.achp.gov).

The Indiana Housing Finance Authority (IHFA) has been working with the Department of Natural Resources – Division of Historic Preservation and Archeology (DHPA) in order to provide you with the way in which the Section 106 Review Process should be conducted. Enclosed with this correspondence is the format that should be followed by Local Units of Government and Not for Profit organizations when carrying out the Section 106 Review process. The document has been broken out into two parts: Local Unit of Government – Section 106 Review Process and Not for Profit – Section 106 Review Process. Please ensure that you are looking at the correct section for your particular entity.

The following summarizes the major changes to the Section 106 Regulations.

### ***Major Changes***

- ◆ **Greater deference to Federal agency-SHPO decision making:** The Council will no longer review routine decisions agreed to by the Federal agency and the State Historic Preservation Officer/Tribal Historic Preservation Officer (adverse effect findings and most Memoranda of Agreement), recognizing that their capability to do effective preservation planning has grown substantially since 1986.
- ◆ **More focused Council involvement:** The Council will focus its attention on those situations where its expertise and national perspective can enhance the consideration of historic preservation issues. Criteria accompanying the regulation specify that the Council may enter the Section 106 process when an undertaking 1) has substantial impacts on important historic properties; 2) presents important questions of policy or interpretation; 3) has the potential for presenting procedural problems; or 4) presents issues of concern to Indian tribes or Native Hawaiian organizations.

---

115 W. Washington St.  
Suite, 1350, South Tower  
Indianapolis, IN 46204

(317) 232-7777  
(800) 872-0371  
<http://www.state.in.us/ihfa>



- ◆ **Better definition of participants' roles:** The Federal agency's primary responsibility for Section 106 decisions is emphasized, and the advisory roles of the Council and the State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) are clarified. Other participants' roles are more clearly defined, particularly Indian tribes, local governments and applicants, who may participate as "consulting parties."

Certain individuals and organizations may also be entitled to be consulting parties, based on the nature of their relation to an undertaking and its effects on historic properties. Others may request to be involved. The exclusive role of the Federal agency to make the ultimate decision on the undertaking is stressed and the advisory roles of the other parties is clearly stated.

- ◆ **Native American roles defined and strengthened:** The 1992 NHPA amendments placed major emphasis on the role of Indian tribes and other Native Americans. The Council's revised regulations incorporate specific provisions for involving tribes when actions occur on tribal lands and for consulting with Indian tribes and Native Hawaiian organizations—as required by NHPA—throughout the process.

The revisions embody the principle that Indian tribes should have the same extent of involvement when actions occur on tribal lands as the SHPO does for actions within the State; this includes the ability to agree to decisions regarding significance of historic properties, effects to them and treatment of those effects, including signing Memoranda of Agreement. Off tribal lands, Federal agencies must consult the appropriate tribe or Native Hawaiian organization.

The provisions recognize Federal agency obligations during project planning to consider properties to which tribes attach religious and cultural significance. Provision is also made for the involvement of the Tribal Historic Preservation Officer in lieu of the SHPO for undertakings on tribal lands when that official has assumed the responsibilities of the SHPO in accordance with Section 101(d)(2) of the NHPA.

- ◆ **Role of applicants recognized:** The revisions acknowledge the direct interests of applicants for Federal assistance or approval and specify greater opportunities for active participation in the Section 106 process as consulting parties. Applicants are permitted to initiate and pursue the steps of the process; however, the Federal agency remains responsible for final decisions regarding historic properties.
- ◆ **Early compliance encouraged:** Provisions have been added to encourage agencies to initiate compliance with the Section 106 process and to begin consultation with the SHPO/THPO and others early in the project planning stage. This should promote early agency consideration of historic properties and prevent late recognition of an agency's legal responsibilities which can often cause delays or compliance problems.
- ◆ **Coordination with other reviews advanced:** Agencies are encouraged to integrate Section 106 review with reviews required under the National Environmental Policy Act (NEPA) and related laws. Specific provisions that make identification and evaluation, public participation and documentation requirements more flexible facilitate this and will streamline reviews, allowing agencies to use information and analyses prepared for one law to be used to meet the requirements of another.
- ◆ **Use of NEPA compliance to meet Section 106 requirements Authorized:** Agencies are authorized to use the preparation of Environmental Impact Statements and Environmental Assessments under the National Environmental Policy Act to meet Section 106 needs in lieu of following the specified Council



process. This is expected to be a major opportunity for agencies with well-developed NEPA processes to simplify concurrent reviews, reduce costs to applicants, and avoid redundant paperwork.

- ◆ **New techniques introduced to deal with marginal or routine Cases:** Federal agencies may seek exemptions from Section 106 or advisory comments on an entire program. Also, the Council may establish standard methods of treating recurring situations. This will allow agencies to save both time and resources that would otherwise be committed to legally mandated reviews.
- ◆ **Public participation clarified:** Opportunities for public involvement in the Section 106 process are simplified and more clearly defined, and Federal agencies are encouraged to use their established public involvement procedures where appropriate. Clarification in this area will reduce controversy over the adequacy of an agency's efforts to involve the public.
- ◆ **Alternate Federal agency procedures flexed:** The provisions allowing Federal agencies to substitute internal procedures for the Council's Section 106 regulations no longer require that the agency procedures be formal rules or regulations. This will make it easier for agencies to tailor the Section 106 process to their needs. Approval of such substitute procedures is linked to requirements of Section 110(a)(2)(E) of the NHPA.

### ***Procedural streamlining***

The following section details changes in the basic Section 106 process. It demonstrates the technical alterations to the process to carry out the changes described previously.

- ◆ **"No effect" step simplified:** The "no historic properties" and "no effect" determinations are now combined into a single "no historic properties affected" finding. The separate "effect" determination of the current regulations has been dropped so that the agency may now move directly to assessing adverse effects when it appears historic properties may be affected.
- ◆ **Identification and evaluation of historic properties made more flexible:** The revised regulation introduces the concepts of 1) phased identification and 2) relating the level of identification to the nature of the undertaking and its likely impacts on historic properties. These concepts are important to effective NEPA coordination and will encourage more cost-effective approaches to survey and identification. Agencies will be able to make preliminary decisions on alternative locations or alignments without having to conduct the more intensive identification efforts necessary to deal with the final design and siting of a project.
- ◆ **Adverse effect criteria and exceptions revamped:** The criteria are revised to better define when projects have adverse effects on historic properties.
- ◆ **Council review of No Adverse Effect determinations eliminated:** The requirement that the Council review all No Adverse Effect determinations is replaced by SHPO/THPO review and concurrence. Consulting parties are authorized to ask the Council to review such a determination if the request is made in a timely manner.
- ◆ **Failure of Federal agency-SHPO/THPO consultation leads to Council involvement:** If an agency and the SHPO/THPO failed to reach a solution to deal with adverse effects, the process required the Federal agency to seek the formal comments of the Council. The revised process now requires the agency

---

115 W. Washington St.  
Suite, 1350, South Tower  
Indianapolis, IN 46204

(317) 232-7777  
(800) 872-0371  
<http://www.state.in.us/ihfa>



to invite the Council to join the consultation and help the parties reach resolution. Termination and comment would follow only if further consultation was not successful. This should result in more negotiated solutions, which are more efficient and usually provide better results.

- ◆ **Council comment provision reflects 1992 NHPA amendments:** Council comments must be considered by the head of the Federal agency receiving them, as required by Section 110(l) of NHPA.
- ◆ **Review of agency findings clarified:** Recognizing that the Council's views on Federal agency actions to comply with Section 106 are only advisory, a new provision allows anyone at anytime to seek the Council's opinion on agency findings and decisions under Section 106. There is no obligation to delay agency action while the Council conducts this review.
- ◆ **Emergency and post-review discoveries situations revised:** Greater emphasis is placed on planning for unanticipated events. Flexible responses are allowed.
- ◆ **Council monitoring of overall Section 106 performance enhanced:** The new regulations will shift the emphasis of Council review from individual cases to assessments of the overall quality of a Federal agency's or SHPO/THPO's performance in the Section 106 process. The obligation of Section 203 of the NHPA for agencies to provide project information to the Council is included. Also, provisions are made for closer Council review of cases where a participant has been found to have shortcomings in complying with Section 106.

If you have questions regarding this correspondence, please contact Shawn Brock at (317) 232-7777 or toll-free at (800) 872-0371.

---

115 W. Washington St.  
Suite, 1350, South Tower  
Indianapolis, IN 46204

(317) 232-7777  
(800) 872-0371  
<http://www.state.in.us/ihfa>



## ***Local Unit of Government – Section 106 Regulations***

Based on the new Section 106 regulations, only federal agencies (Local Units of Government) should be making determinations as to the following: "*finding of no historic properties affected,*" "*finding of no adverse effect,*" or a "*finding of adverse effect.*" Therefore, after the grant administrator or subrecipient collects all necessary documentation and makes one of the following determinations: "*finding of no historic properties affected,*" "*finding of no adverse effect,*" or a "*finding of adverse effect,*" the Local Unit of Government shall provide all necessary documentation to the State Historic Preservation Office (SHPO) regarding the determination.

### **♦ *Purpose of the Section 106 Review Process***

Section 106 of the National Historic Preservation Act requires the Local Unit of Government (LUG) to take into account the effects of their undertakings on historic properties or areas of effect and afford the Advisory Council a reasonable opportunity to comment on such undertakings.

### ***Step 1: Initiating the Section 106 Review Process***

- a. The LUG must send a letter to the State Historic Preservation Officer (SHPO) authorizing consulting parties to participate in the Section 106 Review Process. The letter should state the undertaking which should include a description of the undertaking (including address, city, township, and county) funding source, grant number and identify all consulting parties (applicant, local governments, local historical societies or other preservation organizations who could have an interest in the undertaking).
- b. The public must be involved in the Section 106 Review Process. The LUG shall identify appropriate measures for seeking public input and for notifying the public of the proposed undertaking. For example, the public could be made aware of the project at a city/town/county council meeting or through publishing a legal notice in the local newspaper; however, it is ultimately the LUG's decision as to what measures will be taken to get the public involved in the Section 106 process.

### ***Step 2: Identifying Historic Resources***

The current regulations (36 CFR Part 800) set forth that the LUG or delegate (consulting party) "shall make reasonable and good faith efforts to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey."

### **♦ *Determining the Scope of Identification Efforts Though the Area of Potential Effects***

The LUG or its delegate (consulting party) needs to determine the area of potential effects, which means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking. It is especially important to note that the area of potential effects is not influenced by the preexisting awareness of historic or non-historic resources. Defining the area of potential effects is the first step for determining the scope of identification efforts and needs to be established before one begins to seek information to assess the potential historic properties. To define the area of potential effects, one must take into account effects that are direct or indirect, cumulative, later in time, or at a distance. Once a good faith effort had been made to define the area of potential effects, then it is necessary to consult

with the Indiana SHPO. The LUG or its delegate is entitled to enlist the services of other consulting parties to assist in this step.

◆ *Evaluating Historic Resources*

Below is a list of several sources that can be used in evaluating historic resources:

- a. The National Park Service (NPS) maintains a database list of all properties that are currently listed in the National Register of Historic Places. The information is available through the NPS web site, [www.cr.nps.gov/nr/](http://www.cr.nps.gov/nr/).
- b. The NPS's National Register Criteria for Evaluation are used for considering whether a property is eligible for inclusion in the National Register. The criteria found in the publication entitled *National Register Bulletin 15*, which may be obtained by writing the National Register of Historic Places, National Park Service, US Department of Interior, Post Office Box 37127, Washington D.C. 20013-7121.
- c. Many counties in Indiana have been surveyed to identify potential historic buildings, structures, objects, and districts. The results of these surveys have been published in *Interim Reports*. Some of the *Interim Reports* are available through purchase from Historic Landmarks Foundation of Indiana at (317) 639-4534; however, some *Interim Reports* are out of circulation. All *Interim Reports* are available at the Indiana State Library, and many are available at local libraries and historical organizations.
- d. Historic preservation organizations and county historians may also have historical information on a particular resource or area. For a list of contact names, addresses, and telephone numbers, please check the Indiana Historical Society website at [www.indianahistory.org/](http://www.indianahistory.org/).
- e. Other sources that might be useful for identifying potential historic or archaeological resources include: Sanborn maps (available for reference at the main library of Ball State University or the Geography Library at Indiana University), U.S. Geological Survey maps, old atlases, census information, local, county, or regional histories and prehistory's, and other records indicating previous land use.

◆ *Document Findings*

After evaluating the historical significance of the properties with the area of potential effects, the LUG must provide documentation of its findings to the consulting parties, public and SHPO.

◆ *Federal Agency makes a determination of "Finding of No Historic Properties Affected"*

In the event that the LUG finds that *no historic properties will be affected*, the LUG shall:

- a. Notify SHPO of its findings and provide the following documentation:
  1. A description of the undertaking, specifying the Federal involvement, and its areas of potential effects, including photographs, maps, drawings, as necessary;
  2. A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to 36 CFR 800.4(b); and
  3. The basis for determining that no historic properties are present or affected.

- b. Notify all consulting parties and make the above documentation available to the public for inspection (see Step 1). At this same time, the public must be informed of the "finding of no historic properties will be affected".

◆ *Historic Properties affected*

In the event that the LUG finds that there are historic properties which may be affected by the undertaking or the SHPO disagrees with a finding that no historic properties will be affected, the LUG shall:

- a. Notify all consulting parties including the SHPO and invite their views of the effects; and
- b. Proceed with the assessment of adverse effects

**Step 3: Assessing Effects on Historic Resources**

If the LUG finds that there are historic resources within the area of potential effects that may be affected, the LUG is responsible for applying the criteria of adverse effect for those properties in consultation with the SHPO and other consulting parties. The following is the criteria that must be applied to determine if the undertaking will have a "finding of no adverse effect" or a "finding of adverse effect:" (note: if your project meets even one of the criteria listed above, you must proceed with the "Finding of Adverse Effect")

- a. Physical destruction of or damage to all or part of the property;
- b. Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines;
- c. Removal of the property from its historic location;
- d. Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;
- e. Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
- f. Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure the long-term preservation of the property's historic significance.

◆ *Federal Agency makes a determination of "Finding of No Adverse Effect"*

The LUG makes a determination that the proposed action does not meet the criteria for a "finding of no adverse effect." The LUG must notify SHPO, the consulting parties, and the public of its determination of "finding of no adverse effect."

The LUG must provide the following documentation to the SHPO and consulting parties:

- a. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
- b. A description of the steps taken to identify historic properties;
- c. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
- d. A description of the undertaking's effect on historic properties.
- e. An explanation of why the criteria of no adverse effect was found; and
- f. Copies of summaries of any views provided by consulting parties and the public.

At this same time, the public must be informed of the "*finding of no adverse effect*," and the documentation must be made available to the public for review.

◆ *Agreement of "Finding of No Adverse Effect"*

If the SHPO agrees to the "*finding of no adverse effect*," the LUG can proceed forward with the undertaking.

◆ *Disagreement with "Finding of No Adverse Effect"*

If the SHPO or any consulting party disagrees with the "*finding of no adverse effect*," the LUG should either consult with the disagreeing party to resolve the disagreement or request the Advisory Council to review the finding. The Council shall review the finding and notify the LUG of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documentation. The LUG shall proceed in accordance with the Advisory Council's determination. If the Advisory Council does not respond within 15 days of the receipt of the finding, the LUG may assume the Advisory Council's concurrence with the LUG's findings and proceed accordingly.

However, if concurrence cannot be reached, the LUG shall proceed with a "*finding of adverse effect*".

◆ *LUG makes a determination of "Finding of Adverse Effect"*

The LUG makes a determination that the proposed action does meet the criteria for a "*finding of adverse effect*." The LUG shall work with the SHPO, consulting parties and the public to resolve the "*finding of adverse effect*".

***Step 4: Resolving Adverse Effects***

When the LUG proposes a "*finding of adverse effect*," the LUG shall do the following:

- a. Continue consultation to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate the adverse effects on historic properties pursuant to 36 CFR 800.6.
- b. Notify the Advisory Council of the finding, and provide the Council with the following documentation and where applicable invite the Advisory Council to participate in the consultation:
  1. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
  2. A description of the steps taken to identify historic properties;
  3. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
  4. A description of the undertaking's effect on historic properties.
  5. An explanation of why the criteria of no adverse effect was found applicable or inapplicable including any conditions or future actions to avoid, minimize, or mitigate adverse effects; and
  6. Copies of summaries of any views provided by consulting parties and the public.
- c. Assuming there is agreement, execute a memorandum of agreement (MOA) that established how the adverse effects will be resolved, and asks the SHPO, and any invited signatories or concurring parties to sign the MOA.



- d. Provide the following to the Advisory Council: the Memorandum of Agreement, and documentation. The documentation should include any substantive revisions or additions to the documentation provided to the Council, and evaluation of any measures considered to avoid or minimize the undertaking's adverse effects, and a summary of the views of consulting parties and the public.

♦ ***Summary***

The best way to reduce the time needed for the Section 106 review is for LUG applicants to plan their projects so as to avoid adverse effects on historic properties. This can be done if the LUG identifies all historic properties or important archaeological sites at the beginning of project planning, and using "*The Secretary of Interior's Standards for Historic Preservation Projects*" as a guide in designing the project that will affect historic properties, and consult with the SHPO before reaching final decisions on project design.

## ***Not for Profits – Section 106 Regulations***

Based on the new Section 106 regulations (36 CFR Part 800), only federal agencies (Indiana Housing Finance Authority) should be making determinations as to the following: "*finding of no historic properties affected*," "*finding of no adverse effect*," or a "*finding of adverse effect*." However, IHFA will still be requiring that the Not for Profit (NFP) do all of the background information (gathering of the documentation) on each site address. Therefore, after the NFP collects all necessary documentation and makes one of the following determinations: "*finding of no historic properties affected*," "*finding of no adverse effect*," or a "*finding of adverse effect*," the NFP shall provide all necessary documentation to IHFA. IHFA will forward a letter to the State Historic Preservation Office (SHPO) regarding the determination along with all applicable documentation.

Please note that the following outlines that new process as well as involves the public in the determination process.

### **♦ *Purpose of the Section 106 Review Process***

Section 106 of the National Historic Preservation Act requires the Federal Agency (IHFA) to take into account the effects of their undertakings on historic properties and afford the Advisory Council a reasonable opportunity to comment on such undertakings.

### ***Step 1: Initiating the Section 106 Review Process***

- a. The IHFA must send a letter to the State Historic Preservation Officer (SHPO) authorizing consulting parties to participate in the Section 106 Review Process. The consulting parties are to gather information for the Section 106 Review process, but should not be submitting documentation to the SHPO. IHFA will send the letter authorizing the consulting parties once a grant has been approved by the IHFA board of Directors or when the NFP informs IHFA that they would like to initiate the Section 106 Review process.
- b. The Not for Profit (NFP) shall make the public aware of the project/undertaking by publishing a legal notice in the local newspaper of the project. Please note: if this is a scattered site undertaking, the public must be made aware of each individual property address.

### ***Step 2: Identifying Historic Resources***

The NFP or delegate (consulting party) "shall make reasonable and good faith efforts to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey."

### **♦ *Determining the Scope of Identification Efforts Though the Area of Potential Effects***

The NFP or consulting parties need to determine the area of potential effects, which means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking. It is especially important to note that the area of potential effects is not influenced by the preexisting awareness of historic or non-historic resources. Defining the area of potential effects is the first step for determining the scope of identification efforts and needs to be established before one begins to seek information to assess the potential historic properties. To define the area of potential effects, one must take into account effects

that are direct or indirect, cumulative, later in time, or at a distance. Once a good faith effort had been made to define the area of potential effects, then it is necessary to consult with the Indiana SHPO. The NFP can enlist the services of other consulting parties to assist in this step; however, IHFA would need to be made aware of other consulting parties, as IHFA would be required to notify the SHPO of the consulting parties joining the process.

♦ *Evaluating Historic Resources*

Below is a list of several sources that can be used in evaluating historic resources:

- a. The National Park Service (NPS) maintains a database list of all properties that are currently listed in the National Register of Historic Places. The information is available through the NPS web site, [www.cr.nps.gov/nr/](http://www.cr.nps.gov/nr/).
- b. The NPS's National Register Criteria for Evaluation are used for considering whether a property is eligible for inclusion in the National Register. The criteria found in the publication entitled *National Register Bulletin 15*, which may be obtained by writing the National Register of Historic Places, National Park Service, US Department of Interior, Post Office Box 37127, Washington D.C. 20013-7121.
- c. Many counties in Indiana have been surveyed to identify potential historic buildings, structures, objects, and districts. The results of these surveys have been published in *Interim Reports*. Some of the *Interim Reports* are available through purchase from Historic Landmarks Foundation of Indiana at (317) 639-4534; however, some *Interim Reports* are out of circulation. All *Interim Reports* are available at the Indiana State Library, and many are available at local libraries and historical organizations.
- d. Historic preservation organizations and county historians may also have historical information on a particular resource or area. For a list of contact names, addresses, and telephone numbers, please check the Indiana Historical Society website at [www.indianahistory.org/](http://www.indianahistory.org/).
- e. Other sources that might be useful for identifying potential historic or archaeological resources include: Sanborn maps (available for reference at the main library of Ball State University or the Geography Library at Indiana University), U.S. Geological Survey maps, old atlases, census information, local, county, or regional histories and prehistory's, and other records indicating previous land use.

♦ *Document Findings*

After evaluating the historical significance of the properties within the area of potential effects, the NFP must provide documentation of its findings to IHFA and the public. The NFP shall make the public aware of its findings through a legal notice and make the documentation available to the public. IHFA will forward all of the documentation to the SHPO and the consulting parties.

♦ *NFP makes a determination of "Finding of No Historic Properties Affected"*

In the event that the NFP finds that *no historic properties will be affected*, the NFP shall:

- a. Notify IHFA of its findings and provide the following documentation:

1. A description of the undertaking, specifying the Federal involvement, and its areas of potential effects, including photographs, maps, drawings, as necessary;
  2. A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to 36 CFR 800.4(b); and
  3. The basis for determining that no historic properties are present or affected.
- b. Make the above documentation available to the public for inspection. The NFP shall make the public aware of the "*no historic properties will be affected*" by publishing a legal notice in the local newspaper of the project.
  - c. IHFA will forward the documentation received from the NFP as well as the determination that "*no historic properties will be affected*" to the SHPO and all consulting parties.

◆ *Historic Properties affected*

In the event that the NFP finds that there are historic properties which may be affected by the undertaking or the SHPO disagrees with a finding that no historic properties will be affected, the NFP shall notify IHFA so that IHFA can:

- a. Notify all consulting parties including the SHPO and invite their views of the effects; and
- b. Proceed with the assessment of adverse effects

***Step 3: Assessing Effects on Historic Resources***

If the NFP finds that there are historic resources within the area of potential effects that may be affected, the NFP or consulting parties are responsible for applying the criteria of adverse effect for those properties in consultation with the SHPO and other consulting parties. The following is the criteria that must be applied to determine if the undertaking will have a "*finding of no adverse effect*" or a "*finding of adverse effect*:" (note if your project meets even one of the criteria listed above, you must proceed with the "*Finding of Adverse Effect*")

- a. Physical destruction of or damage to all or part of the property;
- b. Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines;
- c. Removal of the property from its historic location;
- d. Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;
- e. Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
- f. Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure the long-term preservation of the property's historic significance.

◆ *NFP makes a determination of "Finding of No Adverse Effect"*

The NFP makes a determination that the proposed action does not meet the criteria for a "*finding of adverse effect*."

he NFP shall provide the following information to IHFA:

- a. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
- b. A description of the steps taken to identify historic properties;
- c. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
- d. A description of the undertaking's effect on historic properties.
- e. An explanation of why the criteria of no adverse effect was found; and
- f. Copies of summaries of any views provided by consulting parties and the public.

IHFA will provide the documentation to SHPO and all of the consulting parties.

At this same time, the NFP must inform the public of the "*finding of no adverse effect*." The public must be made aware of the finding through a legal notice being published the local newspaper and making the documentation available for public review.

◆ *Agreement of "Finding of No Adverse Effect"*

If the SHPO agrees to the "*finding of no adverse effect*," the SHPO will issue a we concur letter to IHFA and a carbon copy of the letter to the NFP. When this letter is received the Section 106 Review is complete, and the NFP can proceed with the undertaking.

◆ *Disagreement with "Finding of No Adverse Effect"*

If the SHPO or any consulting party disagrees with the "*finding of no adverse effect*," the IHFA should either consult with the disagreeing party to resolve the disagreement or request the Advisory Council to review the finding. The Council shall review the finding and notify the IHFA of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documentation. The IHFA shall proceed in accordance with the Advisory Council's determination. If the Advisory Council does not respond within 15 days of the receipt of the finding, the IHFA may assume the Advisory Council's concurrence with the IHFA's findings and proceed accordingly.

However, if concurrence cannot be reached, the IHFA shall proceed with a "*finding of adverse effect*."

◆ *NFP makes a determination of "Finding of Adverse Effect"*

The NFP makes a determination that the proposed action does meet the criteria for a "*finding of adverse effect*." The IHFA shall work with the NFP, SHPO, consulting parties, and the public to resolve the "*finding of adverse effect*".

**Step 4: Resolving Adverse Effects**

When the IHFA proposes a "*finding of adverse effect*," the IHFA shall do the following (IHFA will depend on the NFP to do the following; however, all correspondence to the SHPO should come from IHFA):

- a. Continue consultation to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate the adverse effects on historic properties pursuant to 36 CFR 800.6.

- b. Notify the Advisory Council of the finding, and provide the Council with the following documentation and where applicable invite the Advisory Council to participate in the consultation:
  - 1. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
  - 2. A description of the steps taken to identify historic properties;
  - 3. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
  - 4. A description of the undertaking's effect on historic properties.
  - 5. An explanation of why the criteria of no adverse effect was found applicable or inapplicable including any conditions or future actions to avoid, minimize, or mitigate adverse effects; and
  - 6. Copies of summaries of any views provided by consulting parties and the public.
- c. Assuming there is agreement, execute a memorandum of agreement (MOA) that established how the adverse effects will be resolved, and asks the SHPO , and any invited signatories or concurring parties to sign the MOA.
- d. IHFA must provide the following to the Advisory Council: the Memorandum of Agreement and documentation. The documentation should include any substantive revisions or additions to the documentation provided to the Council, and evaluation of any measures considered to avoid or minimize the undertaking's adverse effects, and a summary of the views of consulting parties and the public.

◆ **Summary**

The best way to reduce the time needed for the Section 106 review is for LUG applicants to plan their projects so as to avoid adverse effects on historic properties. This can be one if the NFP identifies all historic properties or important archaeological sites at the beginning of project planning, and using "*The Secretary of Interior's Standards for Historic Preservation Projects*" as a guide in designing the project that will affect historic properties, and consult with the SHPO before reaching final decisions on project design.